

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>NALEX ENERGY, LLC,</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>VS.</b>	§	<b>CIV. NO. 4:22-cv-01824</b>
	§	
<b>LAURITZEN BULKERS A/S,</b>	§	<b>FED. R. CIV. P. 9(h)</b>
<b>J. LAURITZEN (U.S.A.), INC.,</b>	§	<b>Admiralty Claim</b>
<b>J. LAURITZEN A/S AND</b>	§	
<b>DEAL ENERGY A/S,</b>	§	
<b>Defendants.</b>	§	

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<b>LAURITZEN BULKERS A/S,</b>	§	
<b>Defendant and Third-Party</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>VS.</b>	§	
	§	
<b>KIRBY INLAND MARINE LP,</b>	§	
<b>Third-Party Defendant.</b>		

**KIRBY INLAND MARINE, LP’S ANSWER TO PLAINTIFF’S FIRST  
AMENDED COMPLAINT**

Pursuant to Rule 14(c) of the Federal Rules of Civil Procedure, Third-Party Defendant Kirby Inland Marine, LP (“Kirby”) files its Federal Rule of Civil Procedure 12(b) Defenses and Answer to Plaintiff Nalex Energy, LLC’s (“Nalex”) First Amended Complaint (ECF Doc. 21), and would show this Court the following:

### **FIRST DEFENSE**

Plaintiff's First Amended Complaint fails to state a claim against Kirby upon which relief can be granted.

### **RESPONSES TO NALEX'S ALLEGATIONS**

1. Kirby generally denies all the allegations contained against it in Plaintiff's First Amended Complaint and each paragraph and sub-paragraph thereof, except as such designated allegations, paragraphs or sub-paragraphs are expressly admitted herein pursuant to the Federal Rules of Civil Procedure.

2. Responding to the particular allegations of the First Amended Complaint, Kirby respectfully shows as follows:

3. The introductory paragraph of the First Amended Complaint includes no allegations requiring a response by Kirby, but if any response is required, the allegations are denied.

### **Jurisdiction and Venue**

4. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 1 of the First Amended Complaint.

5. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 2 of the First Amended Complaint.

6. Kirby admits that Lauritzen has consented to venue in the United States Federal District Court for the Southern District of Texas – Houston Division. Kirby does not have sufficient information to either admit or deny the remainder of the allegations in Paragraph 3 of the First Amended Complaint.

**Parties**

7. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 4 of the First Amended Complaint.

8. Kirby admits that Lauritzen has appeared and filed an answer in this case. Kirby does not have sufficient information to either admit or deny the remainder of the allegations in 5 of the First Amended Complaint.

**Factual Background**

9. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 6 of the First Amended Complaint.

***Nalex and Lauritzen entered into a contract for the supply of bunkers***

10. Kirby admits that Lauritzen requested the supply of 260MT of VLSFO (Very Low Sulphur Fuel Oil) bunkers to the SHANGHAI. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 7 of the First Amended Complaint.

11. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 8 of the First Amended Complaint.

12. Kirby admits that Section 1.2 of Nalex's General Terms defines the term "Buyer" to mean "the party and/or parties contracting to buy products and/or services as set out in the Seller's Confirmation of Order for Products and/or Services, including its servants, agents, brokers, designated representatives, subsidiaries or affiliates wherever applicable." Kirby further admits that Section 7.14 of Nalex's General Terms states that "Products and Services delivered under a Contract shall be made not only on the account

of Buyer but also on the account of the receiving Vessel.” Kirby does not have sufficient information to either admit or deny the remaining allegations in Paragraph 9 of the First Amended Complaint.

13. Kirby admits that Section 9.4 of Nalex’s General Terms requires payment within 30 calendar days of delivery and provides for the accrual of interest on any late payment. Kirby does not have sufficient information to either admit or deny the remainder of the allegations in Paragraph 10 of the First Amended Complaint.

***Nalex supplies bunkers to the SHANGHAI***

14. Kirby admits that it physically delivered bunkers to the SHANGHAI on April 25, 2022, as a delivery agent and barge contractor for Nalex. Kirby does not have sufficient information to either admit or deny the remainder of the allegations in Paragraph 11 of the First Amended Complaint.

15. Kirby admits the allegations in Paragraph 12 of the First Amended Complaint.

16. Kirby admits the allegations in Paragraph 13 of the First Amended Complaint.

***Lauritzen complains about the quality of the bunkers***

17. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 14 of the First Amended Complaint.

18. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 15 of the First Amended Complaint.

19. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 16 of the First Amended Complaint.

20. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 17 of the First Amended Complaint.

21. Kirby admits the allegations in the second and third sentences of Paragraph 18. Kirby does not have sufficient information to either admit or deny the allegations in the first and last sentences of Paragraph 18 of the First Amended Complaint.

***Nalex and Lauritzen agree to final and binding testing***

22. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 19 of the First Amended Complaint.

23. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 20 of the First Amended Complaint.

***AmSpec's final and binding analysis confirms the bunkers are on-spec***

24. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 21 of the First Amended Complaint.

25. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 22 of the First Amended Complaint.

26. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 23 of the First Amended Complaint.

27. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 24 of the First Amended Complaint.

***Lauritzen cannot renege on its agreement of final and binding testing***

28. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 25 of the First Amended Complaint.

29. Kirby admits the allegations in Paragraph 26 of the First Amended Complaint.

***Lauritzen is in breach of its contract with Nalex***

30. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 27 of the First Amended Complaint.

31. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 28 of the First Amended Complaint.

**CAUSES OF ACTION**

**COUNT I:**

**Breach of Maritime Contract against Lauritzen**

32. Paragraph 29 of the First Amended Complaint includes no allegations requiring a response by Kirby, but if any response is required, the allegations are denied.

33. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 30 of the First Amended Complaint. Kirby denies that it is obligated to Nalex to pay for the provision of goods and services, and denies that hit has agreed to make payment to Nalex.

**COUNT II:**

**Breach of Contract against Lauritzen (finality of testing)**

34. Paragraph 31 of the First Amended Complaint includes no allegations requiring a response by Kirby, but if any response is required, the allegations are denied.

35. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 32 of the First Amended Complaint. Kirby denies that it is obligated to Nalex for damages.

**COUNT III:**

**Unjust Enrichment/Quantum Meruit against Lauritzen**

36. Paragraph 33 of the First Amended Complaint includes no allegations requiring a response by Kirby, but if any response is required, the allegations are denied

37. Kirby admits that bunkers were delivered to the SHANGHAI. Kirby does not have sufficient information to either admit or deny the remainder of the allegations in Paragraph 34 of the First Amended Complaint. Kirby denies that Nalex is entitled to recover any amounts from Kirby.

38. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 35 of the First Amended Complaint. Kirby denies that it accepted the subject bunkers.

**COUNT IV:**

**Suit on Account against Lauritzen**

39. Paragraph 36 of the First Amended Complaint includes no allegations requiring a response by Kirby, but if any response is required, the allegations are denied.

40. Kirby admits that Nalex, through Kirby, furnished bunkers to the M/V SHANGHAI. Kirby does not have sufficient information to either admit or deny the remainder of the allegations in Paragraph 37 of the First Amended Complaint. Kirby denies that it promised and became bound to pay Nalex the sums of money charged on Lauritzen's account. Kirby further denies that Nalex made written demand on Kirby for payment..

41. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 38 of the First Amended Complaint. Kirby denies that the bunkers were billed to Kirby, and further denies that there is any balance due for the bunkers on Kirby's account.

#### **Conditions Precedent**

42. Kirby does not have sufficient information to either admit or deny the allegations in Paragraph 39 of the First Amended Complaint as to Lauritzen. Kirby denies that all conditions precedent have been performed or have occurred as to Kirby.

#### **Waiver**

43. Paragraph 40 of the First Amended Complaint includes no allegations requiring a response by Kirby, but if any response is required, the allegations are denied.

#### **Prayer**

44. Kirby denies that Nalex is entitled to the relief requested in the Prayer of the First Amended Complaint as to Kirby.

#### **SECOND DEFENSE**

Kirby asserts the affirmative defense of failure of consideration with respect to Nalex's claims against Kirby.



**THIRD DEFENSE**

Kirby denies the existence of a contract between Nalex and Kirby for the sale of the bunkers to the M/V SHANGHAI.

**FOURTH DEFENSE**

Kirby is not liable to Nalex for any claims for payment arising out of or in connection with the provision of the bunkers to the M/V SHANGHAI

**FIFTH DEFENSE**

Kirby is not responsible for any claims for payment asserted by Nalex against Lauritzen in connection with the provision of bunkers to the M/V SHANGHAI.

**SIXTH DEFENSE**

Kirby reserves the right to plead additional defenses or respond in more detail to Plaintiff's First Amended Complaint as further investigation and discovery are conducted.

WHEREFORE, PREMISES CONSIDERED, Third-Party Defendant Kirby Inland Marine, LP respectfully requests that this Court dismiss Plaintiff's First Amended Complaint as to Kirby Inland Marine, LP, and award Kirby Inland Marine, LP its attorneys' fees and costs incurred in the defense of this action. Kirby Inland Marine, LP seeks such other and further relief to which it may be justly entitled.

By: /s/ David James

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 21st day of December, 2022, served a copy of the foregoing on all counsel of record via CM/ECF.

/s/ David James

David James